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IN THE COURT OF APPEALS OF INDIANA

MELVIN SEE,	)	
	)	
Appellant-Codefendant,	)	
	)	
vs.	)	No. 85A02-0604-CV-293
	)	
PAMELA CURTIS,	)	
	)	
Appellee-Codefendant,	)	
	)	
and	)	
	)	
FORTIS INSURANCE BENEFITS COMPANY,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Wayne E. Steele, Special Judge
Cause No. 85C01-0404-PL-195

November 21, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Seeking the proceeds of his deceased son's life insurance policy, appellant-defendant Melvin See ("See") appeals the trial court's granting of Pamela Curtis's ("Curtis") motion for summary judgment. We affirm.

Issue

Appellant See raises several issues for review which we restate as whether the trial court properly determined that Curtis, the deceased's ex-wife, should receive life insurance proceeds where the deceased did not revise his beneficiary designation after obtaining a divorce.

Facts and Procedural History

The following facts are uncontested.[1] See is the father of Philip J. See ("Philip"). Philip married Curtis on February 10, 1979. While married, he procured a life insurance policy on himself in November of 1993 with AMEX Life Assurance Company ("AMEX"), and named Curtis as his only beneficiary. Their marriage was dissolved on August 18, 1998, and they never remarried. At no time, however, did Philip file a revised beneficiary designation. Philip died on September 10, 2003. From November of 1993 until his death, withdrawals were made every quarter from Philip's credit union account to pay life insurance premiums. As of 2001, Fortis Insurance Benefits Company ("Fortis") began underwriting a life insurance policy on Philip.

The relevant provisions of the Fortis policy are as follows:

- Noted on the face of the policy are the words "beneficiary as on file." Id.

- Below the heading "Schedule," the effective date is noted as October 1, 2001. Id.
- "Beneficiary" is defined as "the person or entity named by the insured [c]ertificateholder [sic], on forms and in a manner approved by [u]s, to receive benefits." App. at 19.
- "Benefits for the [c]ertificateholder's [sic] loss of life will be paid in accordance with the [b]eneficiary designation in effect at the time of payment . . . . If no [b]eneficiary is named or survives [y]ou, the benefit will be payable to the first surviving class of the following: the [c]ertificateholder's spouse, children, parents, brothers, sisters, or estate." App. at 20.

After Philip's death, Fortis filed a complaint for interpleader, pursuant to Indiana Trial Rule 22, alleging that both Curtis and See were claiming the Fortis proceeds. In response to a motion to dismiss filed by See, Fortis filed a notice of compliance, attaching a copy of its policy. After Curtis answered the complaint, both See and Curtis moved for summary judgment.[2] See objected to all or portions of certain affidavits designated by Curtis.

On March 2, 2006, the trial court granted Curtis's motion for summary judgment. See now appeals.

[1] These facts are either alleged by See or made in statements designated by Curtis to which See did not object.
[2] See did not file an answer.

Discussion and Decision

I. Standard of Review

On appeal from the grant or denial of a motion for summary judgment, our standard of review is the same as that of the trial court; summary judgment is appropriate only where the evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); Am. Home Assurance Co. v. Allen, 814 N.E.2d 662, 666 (Ind. Ct. App. 2004) reh'g denied and trans. dismissed. A party seeking summary judgment bears the burden of making a prima facie showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. Tack's Steel Corp. v. ARC Constr. Co., Inc., 821 N.E.2d 883, 888 (Ind. Ct. App. 2005). Once the moving party satisfies this burden through evidence designated to the trial court pursuant to Trial Rule 56, the nonmoving party may not rest on its pleadings, but "must set forth specific facts showing that there is a genuine issue for trial." T.R. 56(E).

Neither the trial court nor the reviewing court may look beyond the evidence specifically designated to the trial court. Best Homes, Inc. v. Rainwater, 714 N.E.2d 702, 705 (Ind. Ct. App. 1999). The fact that the parties made competing motions for summary judgment does not alter our standard or review. Ind. Farmers Mut. Ins. v. Blaskie, 727 N.E.2d 13, 15 (Ind. Ct. App. 2000).

II. Analysis

As a preliminary matter, we acknowledge that See moved to strike, on various grounds, all or portions of certain affidavits Curtis designated in support of her motion for summary judgment. The trial court heard argument on these objections, but did not make

any particular factual findings or any evidentiary rulings in its order, simply finding for Curtis as a matter of law. Specific findings and conclusions are not required. Bernstein v. Glavin, 725 N.E.2d 455, 458 (Ind. Ct. App. 2000), trans. denied. A grant of summary judgment may be affirmed upon any theory supported by the designated evidence. Id. at 458, 459.

On appeal, See challenges the affidavits[3] as containing hearsay and legal conclusions, pursuant to Indiana Rules of Evidence 704(b), 801, and 802. Indiana Trial Rule 56(E) provides that, "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." T.R. 56(E).

"'Hearsay'" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Evid. R. 801(c). Hearsay is not admissible except as otherwise provided. Evid. R. 802. Meanwhile, "[w]itnesses may not testify to opinions concerning . . . legal conclusions." Evid. R. 704(b). In interpreting Evidence Rule 704(b), this Court has looked to the Seventh Circuit for guidance. "Federal courts have developed the following test to distinguish between opinions containing admissible facts and those containing inadmissible legal conclusions: if the terms used by the witness have a separate, distinct, and specialized meaning in the law different from that present in the vernacular, exclusion is appropriate." Lasater v. House, 805 N.E.2d 824, 835 (Ind. Ct. App. 2004) (citing Torres v. County of Oakland, 758 F.2d 147, 151 (6th Cir. 1985)), affirmed in part, vacated in part.

In Lasaster, two expert witnesses testified that "undue influence" had been exerted on a testator. This Court found that the trial court abused its discretion in admitting the testimony because "undue influence" has a legal meaning that the jury could not be expected to understand. Id.

Here, both Curtis and Bruce Ingraham, president of Beacon Credit Union, testified that their affidavits were based upon their personal knowledge. Curtis testified that "[c]overage under the [Fortis] policy was first issued to Philip in November, 1993, as a result of his enrollment in a program of insurance benefits for members of Beacon, formerly Wabash County Farm Bureau Credit Union." Ingraham's testimony reiterated this point, and detailed a chain of insurance entities providing life insurance to Beacon members. Significantly, Ingraham testified that Fortis had not required Beacon members to execute new beneficiary designations. He added that life insurance premiums were deducted from Philip's credit union account every quarter from November of 1993 until his death.

None of their statements are hearsay because they are the declarants' own statements based on personal knowledge. Meanwhile, the terms that Curtis and Ingraham used do not have distinct legal meaning from the vernacular. A jury could reasonably be expected to understand the nature of the statements. Accordingly, none of the statements contain legal conclusions. Ingraham's entire affidavit and Curtis's statement in paragraph nine of her affidavit would be admissible, and therefore may be considered as supportive of Curtis's motion for summary judgment.

We next consider whether the designated evidence demonstrates that Curtis is entitled

[3] We limit our analysis to the affidavits of Curtis and Bruce Ingraham.

to judgment as a matter of law. In this case, Philip's father and Philip's ex-wife both claim the proceeds of his life insurance contract. Fortis acknowledges that it owes one of the parties, indeed filing its complaint for interpleader to determine which one to pay. There is no dispute that Philip named Curtis as his only beneficiary under the AMEX policy, that he did not revise his designation at any time, and that the Fortis policy lacked a provision automatically changing the beneficiary designation in the event of divorce. See designates no evidence to contradict this.

In evaluating this case, we consider Hancock v. Kentucky Central Life Insurance, 527 N.E.2d 720 (Ind. Ct. App. 1988), reh'g denied, trans. denied. As here, the deceased in Hancock did not revise his beneficiary designation after dissolution of his marriage. This Court concluded that, "[i]n Indiana, a divorce decree alone does not result in a change of the beneficiary named in a life insurance policy." Id. at 725 (citing Farra v. Braman, 171 Ind. 529, 86 N.E. 843, 850 (1909)). We decline to deviate from that precedent.

Conclusion

There are no genuine issues of material fact. Curtis is entitled to judgment as a matter of law.

Affirmed.

RILEY, J., and MAY, J., concur.